FEDERAL COMMUNICATIONS COMMISSION

In re:)
) MM Docket No. 91-221
FCC EN BANC) MM Docket No. 87-8
LOCAL BROADCAST OWNERSHIP)

Pages: 1 through 130

Date: February 12, 1999

Place: Washington, D.C.

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
[illegible]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
FCC EN BANC)
LOCAL BROADCAST OWNERSHIP)

Commission Meeting Room
TWC-305
The Portals
445 Twelfth Street, S.W.
Washington, D.C.

Friday,
February 12, 1999

The hearing commenced, pursuant to Notice, at 9:20 a.m., before the Commissioners of the United States Federal Communications Commission, William E. Kennard, Chairman, presiding.

APPEARANCES:

On Behalf of the FCC:

WILLIAM E. KENNARD, CHAIRMAN
MICHAEL K. POWELL, COMMISSIONER
SUSAN NESS, COMMISSIONER
HAROLD FURCHGOTT-ROTH, COMMISSIONER
GLORIA TRISTANI, COMMISSIONER

Panel Members:

BILL BAKER
WNET-TV, Channel 13, New York

APPEARANCES (Continued):

Panel Members (Continued):

GREG SIDAK
American Enterprise Institute

OWEN FISS
Professor, Yale

KENT MIKKELSEN
Economist Inc.

DEAN ALGER
Public Affairs Consultant

VICTOR MILLER
Bears Stearns

LAWRENCE K. GROSSMAN
Chairman, Connecticut Board Public Programming
Strategic Planning Committee

JEFF MARCUS
President/CEO, Chancellor Media

ALAN FRANK
Post Newsweek

ROYCE YUDKOFF
Managing Partner, Abry Partners

STEVIE WONDER (MORRIS)
Owner, KLJH

KAREN SLADE

MIKE McCARTHY
Executive Vice President/General Counsel
Belo Corporation

ANDY SCHWARTZMAN
MAP

P R O C E E D I N G S

9:20 a.m.

CHAIRMAN KENNARD: Good morning. Could we please come to order? Good morning, and welcome to today's en banc hearing on local television ownership. We are delighted to have such a distinguished group of panelists with us today. And I welcome you all and thank you for making time to be here with us today.

We have a lot to accomplish today. We have a very packed agenda, two panels. And I want us to get started so that we can adjourn by noon.

The topic of today's hearing is the Commission's local television ownership rules. Today, we're gathered to address the TV duopoly rule, the radio-television cross-ownership rule -- also known as the one-to-a-market rule. And we're also going to hear about television local marketing agreements, also known as LMAs.

Now, in reviewing our broadcast ownership rules, I believe that we should be guided by two important principles. First, the bedrock obligation to promote diversity over the airwaves; and second, to ensure that we have a robust, competitive broadcast industry.

These twin goals, diversity and competition, are in my view the core components of the Commission's public interest mandate and they have served as a foundation for the work of this Commission for decades.

Now, although much has changed over the past decades, the centrality of these goals to our policymaking and to our country have not. Despite the growth of cable, DBS, and other video competitors, broadcast television continues to serve as the primary source of news and information for most Americans today. It's a vital component of our society, one that has a profound effect on the vibrancy of public debate in our society and fundamentally the success of our democracy.

We also recognize that much is changing in the marketplace. The world is going digital. Cable network programming has gained in popularity and is growing. The internet has burst on the scene, presenting Americans with a whole array of new information news.

And as we approach this changing landscape, it is important that this Commission keep up with changes in the marketplace, but never losing sight of the foundations of diversity, a basic tenet of our national policy, as the Supreme Court has written. We must have the widest possible dissemination of information from diverse sources. The Supreme Court has said that this is essential to the welfare of the public.

So, finding the appropriate balance between competition and diversity is always difficult. And I believe that considering these rules will be among the most important and difficult public policy decisions that this Commission makes.

They force us to answer some very fundamental questions, like: how do we preserve diversity and localism while ensuring that broadcasters have flexibility to compete and to move into the digital age; how do we make sure that all Americans have opportunities to participate in this marketplace, particularly small businesses, minority companies, companies owned by women.

But at the end of the day, what is at stake here is the preservation of a robust system of free over-the-air broadcasting in which all Americans have opportunities to participate, not only as viewers and listeners, but also as entrepreneurs and participants.

Well, we have assembled a -- a very distinguished group of panelists with diverse points of view to shed light on these topics. I will ask first the Commissioners -- I will invite them to give a brief opening statement and then we'll go to our panelists. After that, we'll have some brief period for discussion and question and answer among the Commissioners and the panelists.

The first panel here is composed of representatives from academia and Wall Street, as well as some other people who have informed views on these topics.

We will then have a second panel of speakers who will represent the broadcast industry and also representatives from public interest organizations who have been following these issues for many years.

The only thing I ask is that the panelists be brief. We have a very tight schedule and a lot of people to hear from. So we're going to ask that each panelist limit yourself to five minutes to present your views.

And we have a very able timekeeper here, our secretary, Magalie Salas. She is going to give you notice at the one minute mark. And I will apologize in advance if I very rudely interrupt you in mid-sentence. But I'm afraid that that's the only way we're going to get through this on time today.

So without further ado, I will ask Commissioner Ness if she has any opening comments.

COMMISSIONER NESS: Thank you, Mr. Chairman. But I can't imagine that you have a rude bone in your body.

I'm very pleased that we're holding this en banc today. It's a discussion that's long overdue. Structurally you commented, Mr. Chairman, about diversity and competition as being the basic tenets of our broadcast system.

Structurally, our system of broadcast ownership was founded on two other concepts, private ownership and localism. Broadcasters are stewards of the airwaves. They receive highly coveted licenses to use a portion of the radio spectrum for free in exchange for serving the public. And they've served us well.

And we license local stations, not national networks, again, to ensure that our communities are well served. The vast majority of Americans get their news and information from broadcast stations - be it received over the air or via cable. Free over-the-air broadcast is a service that's ubiquitous, that can be received anytime, anyplace, without going through a gatekeeper or being tethered.

Free over-the-air broadcast, when ownership is widely held, is a vital underpinning of our democratic society. As the Chairman noted, the Supreme Court opined that the First Amendment itself rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. So I have always been a strong supporter of the concepts of free over-the-air broadcasting, where it's been widely held.

Now, the ownership proceedings that have prompted this hearing were underway when I first joined the FCC in 1994. And there have been enormous changes in the media landscape since that time. We're getting our operations here underway.

There was the Telecommunications Act of 1996, which set the stage for significant consolidation of ownership, especially in radio. And instead of just three television networks when I joined the Commission, we now have seven.

There is now significant presence of DBS, which was just being launched a few years ago. There is continued growth of cable and cable networks. We have eliminated the financial interest in syndication and prime-time access rules since that time.

And digital television, which was once a dream, has now been launched, with every television licensee being loaned a second six-megahertz channel to effectuate a smooth transition to digital and with great flexibility to provide new and exciting services for the consumer with new revenue streams.

And then there is the explosive growth of the internet which, among other things, permits people to receive broadcast programming from around the globe.

What is the impact of all of these changes on the delivery of free over-the-air television to the American consumer? How do they affect government's role? What are the public policy goals we're trying to achieve? And how are these goals changed, if at all, in light of the other developments that I just mentioned?

Today's hearing gives us an opportunity to explore these important questions. And I look forward with great enthusiasm to the ensuing discussion. Thank you, Mr. Chairman.

CHAIRMAN KENNARD: Thank you, Commissioner. Commissioner Powell.

COMMISSIONER POWELL: Mr. Chairman, I'll reserve my comments to the questioning in the interest of time.

CHAIRMAN KENNARD: Thank you. Commissioner Furchgott-Roth.

COMMISSIONER FURCHGOTT-ROTH: Thank you, Mr. Chairman. I would like to thank you for holding this hearing. I would like to welcome our guests who have taken a great deal of time out of their busy days both to come here and to prepare their testimony. And I think all of us look forward to speedy action on resolving these issues and ultimately the repeal or the relaxation of our ownership rules.

I think that's the clear intent of Congress, as demonstrated in a letter that we received yesterday, which I would request, Mr. Chairman, can be entered into the record. The economic basis for the continuation of many of these rules is quite dubious. The information and entertainment markets in this country are -- have become just a continuum of differentiated product markets.

There have been an explosion of sources, as Commissioner Ness has -- has just described. Our own video competition report issued just a couple of months ago describes enormous expansion of sources of multi-channel video programming, which is only one small facet of both the video industry and the information and entertainment industry.

Antitrust concerns are real, but they are addressed by other federal agencies. And I think we are left with a puzzling question which is why we continue to apply a much more stringent and punishing set of rules to one segment of this differentiated product market and -- and not to others.

I look forward to the comments from the panelists today. And I'm sure we're all going to learn a lot. Thank you.

CHAIRMAN KENNARD: Thank you, Commissioner. Commissioner Tristani.

COMMISSIONER TRISTANI: Thank you, Mr. Chairman. I want to mention three concerns that I hope the panelists will address this morning. These don't deal with the nuts and bolts of our local ownership rules or the grandfathering issues that have been in the press, but with the underlying basis for our rules.

It's these fundamental issues that will determine what kind of local ownership rules are necessary. First, is broadcasting just another business like making widgets or toasters, or is it still more than a business? That is, is there still something special about broadcasting that warrants special treatment by the Government, whether it's special benefits like must-carry or special restrictions like the ownership rules we're discussing today?

I've always believed that free over-the-air broadcasting is special and that it plays a unique and important role in our society, that warrants special treatment. I would like to hear from both sides of that issue, from those who agree and from those who believe that the explosion of new media, like the internet and cable, means that whatever unique role broadcasting used to play is over and that the era of special treatment, both good and bad, ought to end.

My second question is, what is it about free broadcasting that we should preserve? Is it whatever entertainment advertisers are willing to pay for or is it something more than that? The benefit we are trying to preserve will shape the kind of ownership rules that make sense.

In my mind, the primary benefit worth preserving is the flow of diverse viewpoints on the issues of public importance. There is nothing more crucial to democracy than a full and fair debate of the issues. And broadcasting is still the place most people go to become informed.

This goals requires more separately owned stations in town than, for instance, if we all were concerned about was -- all that we were concerned about was making sure that people had access to local weather and emergency information. Again, I would like to hear from those who agree and from those who believe that our ownership rules ought to be tailored to a different goal.

Third, I would like to hear about the effect of consolidation on the broadcasting business. Are bigger broadcasters able to do a better job of informing the public or does consolidation simply lead to homogenized viewpoints and a bottom-line mentality that degrades the product?

I look at the rampant consolidation in the radio business over the past few years with its outsourcing of news, national play lists, and distant owners, and frankly I'm concerned. I'm even more concerned that radio consolidation is not nearly over. I hear rumblings about the possibility of one company controlling over 900 radio stations. And I fear for the public interest.

I wouldn't want to see television broadcasting head down that road. Some public goods may not be valued on Wall Street, but they are priceless on Main Street. I look forward to your comments.

CHAIRMAN KENNARD: Thank you, Commissioner. We'll begin with our first panelist, Mr. Baker from WNET-TV. And I'll ask Mr. Baker and all the panelists to give a brief introduction of themselves and their affiliation. Thank you.

MR. BAKER: Thank you very much, Mr. Chairman and Commissioners. I'm Bill Baker. I'm president of WNET-TV, although I'm an author of the book -- co-author of the book Down the Tube, and a HAM radio operator, W1BKR, former -- and former president of Westinghouse Television and chairman of Westinghouse's cable programming businesses.

I'm going to read quickly and -- and if I get cutoff, my entire remarks I've made available. So I'm going to try to maybe do a digested version.

This is an issue of profound importance. Indeed, it goes right to the heart of our way of life. Democracy by definition depends on the free and uninhibited expression of a range of ideas, opinions, and voices.

Since most Americans still get most of their news and information via free over-the-air television, it's imperative to the health and welfare of the American people that we maintain an unfettered marketplace of ideas in that medium. Accordingly, when we -- when conditions conspire to interfere with or impede such expression, our democratic system is notably weakened.

Since its earliest days, American broadcasting has had to balance its dependence on the profit motive with its obligations to the public interest standard to which Congress has never wavered. These two forces have been locked in a dynamic tug of war that has driven the development of radio and television and thrust it into the center of American life.

In my thirty years plus in broadcasting, I have had the privilege of heading up a major commercial television group and presiding over one of America's foremost public television stations. Through that professional experience and in researching the book Down the Tube, I've come to respect a healthy mix of marketplace incentives and regulation in the public interest.

But today I fear that you are about to let private interests tip the scales too far in their favor. All around us, we see evidence that when corporate balance sheets come to dominate a media concern, the shareholders garner the profits at the expense of viewers looking for substance.

A recent survey commissioned by the Benton Foundation and the Project on Media Ownership discovered that 80 percent of all those polled were in favor of more educational programming for children and more local programming. Yet as we all know, it took Congress and the FCC to mandate that broadcasters provide just three hours of educational programming for children per week.

Unregulated, programmers found no incentive to provide families with even a meager ration of educational fare. As for local programming, broadcasters supporting the modification and/or the elimination of cross-ownership and duopoly rules propose that cost savings they will enjoy from operating co-located facilities in a single market will allow them to compete more effectively. But at what cost?

Two apparently competing news programs emanating from a single newsroom at two different stations certainly do not reflect the vigorous marketplace of ideas from the diverse and antagonistic sources that the Supreme Court deemed essential to the public welfare.

Moreover, there is no assurance that a single owner of multiple outlets counter-programming itself will actually provide more meaningful service to viewers outside the mainstream demographic sectors, especially in cases where corporate owners' ties to the communities are minimal and local management's measure of success is the short-term bottom line.

Consolidation in radio has not resulted in any diversity that I can discern. Moreover, with the general easing of ownership limitations and the lifting of the three-year anti-trafficking rule, the Commission has allowed radio stations to be turned into little more than commodities whose sky-rocketing market values must of necessity restrict the possibility of ownership to a select few.

Arguing that consolidation will not harm the marketplace of ideas, industry leaders insist that stations will serve the public, no matter who owns them. But can we seriously suggest that Fox Broadcasting Service is not influenced by the views of Rupert Murdoch? Is there anyone among us who would assert that the combined CBS-Westinghouse view of serving the public interest is the same as the distinct and competitive views of those companies when they were run by those two old adversaries, Bill Bailey and Don McGannon?

As an industry veteran who has been head of a multi-group conglomerate, take it from me: ownership matters. Yes, the economy has changed and broadcasting must endure increased competition from cable and other new media. That does not justify every scheme for reducing competition within the medium.

We must remember that broadcasters have a special position in our society. As trustees of a prized national resource, they hold an obligation to look beyond the bottom line. To aim for the bottom line is to aim too low.

We -- were commercial broadcasters in financial peril, perhaps their arguments would be more convincing.

And my comments would take on a different tone. But the fact is that broadcasting remains a highly lucrative business.

Unfortunately, it's local diversity that could suffer. In my home town of Cleveland, Ohio, where only two of the 20 assigned radio stations were not locally owned when I was living there, those owners were active community leaders. Today there is only one such owner. Moreover, 14 of the stations are owned by three companies with minimal local ties.

CHAIRMAN KENNARD: Excuse me, Mr. Baker. Please wrap up.

MR. BAKER: Okay. Before you act, I urge you to put the issue on the public docket and air them fully. In Down the Tube, we discuss the many unintended consequences of past FCC deregulation. Be sure that the decisions you make today will not become infamous chapters in a book yet to be written.

Whatever has been said by influential Congress members, however the definition of public interest may change over time, Congress has not removed the standard from the Communications Act. And this Commission must define its substance. Today, the developing history of American broadcasting has its spotlight on each one of you. Consider what you do and what you undo.

CHAIRMAN KENNARD: Thank you, Mr. Baker. Thank you very much. Mr. Sidak.

MR. SIDAK: I'm Greg Sidak. I'm a scholar at the American Enterprise Institute here in Washington. For more than a decade, I've advocated in articles and books and testimony that the Commission eliminate its various broadcast ownership rules and instead rely on antitrust principles to oversee mergers and other transactions in this market.

I think that the tool of antitrust enforcement is a more subtle and finely calibrated policy instrument for addressing both competition in the marketplace for advertising -- which is what broadcasters sell -- and also competition in the marketplace of ideas.

I think the good news is that both on the question of diversity of viewpoints and economic competition in the mass media, there -- there is a healthy stake today. And that raises a question then of what benefit the ownership rules create on top of that already existing healthy state of competition and diversity of viewpoints.

My view is -- is that they probably produce no benefit on the margin. And at the same time, they may produce some significant costs. And in my view, those costs therefore likely exceed the benefits, which I believe to be nonexistent.

What are the costs? Well, I think they are of three kinds. One is the prevention of the achievement of economies of scale or scope in the structuring of broadcast businesses. And that is a loss of economic efficiency, which ultimately is not passed along to consumers.

Another byproduct of that, however, speaks directly to the diversity question. So I think a second cost is that if the efficient structure of the broadcasting industry is truncated and if broadcasters do not attain the scale and scope that they otherwise would in the absence of the rules, they may be denied the opportunity to operate at the minimum size that is necessary to support investment in origination of local programming.

So that -- that could actually be a cost of the current regime that -- that would be counterproductive from the perspective of enhancing diversity of viewpoints.

The third kind of cost is something that is a little more complicated to describe, I think, in any detail. And I believe that, for the record, there was submitted comments that I filed last year on behalf of the Newspaper Association of America, in which I elaborate on a theory of -- of how the prohibition on cross-ownership may actually inhibit freedom of speech by broadcasters by denying them the achievement of economies of scale and scope.

Essentially, this is a situation where the degree of asset specificity that a broadcaster has to make in its station becomes subject to regulatory risk. And without going into the great details of this - it's described at length in my -- in my testimony last year.

It's my belief that there may actually be a content result of structural regulation. And this harkens back to a concern that I had when I was at the Commission more than ten years ago. At the time, one cross-ownership case was in the D.C. Circuit. That involved newspaper TV, not broadcasting. But the D.C. Circuit in that case made the point that even ostensibly structural rules can have content results that are antithetical to freedom of speech.

So, just to conclude, I believe that the benefits of the rules are -- are negligible or nonexistent. The costs are non-trivial, including cost to diversity and freedom of expression.

CHAIRMAN KENNARD: Thank you, Mr. Sidak. Our next witness is Professor Owen Fiss from the fine institution of Yale Law School. And I would note from the record that my wife still talks about how much she enjoyed your injunctions class, Professor Fiss.

PROFESSOR FISS: In the 1992 Cable Act, Congress imposed an obligation on cable operators to carry programs of over-the-air broadcasters. Congress feared that without this must-carry obligation, the operators would not carry these programs. This would further weaken the broadcast industry and result in a situation in which many homes in the United States would have no television at all.

Now, like the rules that are specifically before you today, the duopoly and cross-ownership rules, the must-carry regulations impose burdens and costs on the operators. Specifically, the freedom of operators to choose their mix of programs was restrained and the interest of the potential programmers and their viewers was constrained as well. And these interferences had both a First Amendment and an economic significance.

Yet in the 1997 decision in Turner Broadcasting, the Supreme Court upheld those regulations. As the Court saw it in that case, the issue was not whether or not the interest of these media organizations was to be burdened. Almost every regulation of a media entity creates burdens. And they have a First Amendment effect. The question was whether or not those burdens could be justified by the overriding purposes served by the legislation.

Now, in Turner Broadcasting, the Supreme Court sustained these must-carry regulations on the idea that absent this regulation, we stood in a situation where the 40 percent of American homes that were not served by cable would be without any television at all, and that this purpose was sufficient to justify the intervention of

Congress.

Now, there was a crucial distinction in the majority opinions. And I think it's important to underscore this distinction as a way of casting light on the issues that are before you.

One faction of the majority was represented by Justice Kennedy. And he analyzed this problem largely in antitrust terms. Noting the vertical integration between cable operators and cable programmers, he feared that the cable operators would engage in predatory practices and as a result of these predatory practices, destroy the broadcasting industry.

Now, in contrast to Justice Kennedy, Justice Breyer, also essential for the majority in Turner Broadcasting, disavowed any reliance on antitrust. For him -- for him, the crucial vector of analysis was the First Amendment. He, too, assumed that the decision of the programmers to drop broadcasting may have an extraordinarily unfortunate consequence for these homes in America that depended on free over-the-air broadcasting.

But he was prepared to assume that that decision might be based purely on economic considerations, specifically the maximizing of profits. And yet he insisted that even if the decision is based purely on economic, rational grounds, that there was an important purpose to be served by the regulation, and that this purpose was the furtherance of -- of diversity, as has been repeated several times - the widest possible dissemination of information from diverse and antagonistic sources.

The issue --

CHAIRMAN KENNARD: Professor Fiss, please sum up.

PROFESSOR FISS: I will. The issue -- the issue in that case was not simply one of -- if I could evoke the image of the Commissioner's statement -- the issue in that case was not simply one of balancing efficiency and diversity. I believe that the issue in that case was one of setting priorities.

The Chairman said that diversity is a bedrock principle. But I think what Turner Broadcasting teaches is that it is a bedrock principle that ultimately rests on the Constitution. Efficiency is a means of achieving that bedrock principle. But it is only a means. It should never, I think, govern the end, which is freedom.

CHAIRMAN KENNARD: Thank you, Professor. Mr. Mikkelsen.

MR. MIKKELSEN: I am Kent Mikkelsen with Economist Incorporated here in Washington, D.C. I am pleased to have an opportunity to present an economist's perspective on the station ownership issues before the Commission today.

There is a general presumption among economists and in society as a whole that the self-interested actions of individuals and firms in a free market will lead to socially desirable outcomes. There are a few recognized exceptions to this presumption.

One such exception is in the area of competition. Economic theory teaches that competing firms have an incentive to combine together, thereby reducing competition and raising their profits at the expense of consumers. The antitrust laws are designed to prevent such concentration from occurring.

They are justified by the clear potential for what we call the market failure. The antitrust agencies have developed regularly widely-accepted procedures for determining whether or not a particular merger or joint ownership is likely to reduce competition significantly.

Note that the agencies do not attempt to maximize the number of competitors. Mergers and joint ownership can yield benefits to consumers and also are an aspect of economic freedom. For these reasons, only mergers that are judged likely to have a significant impact on competition should be opposed.

Competition analysis is best done on a case-by-case basis. However, I would like to share some general conclusions which I think would be verified by case-by-case analysis.

First, suppose that the TV duopoly rule were relaxed. Assume that TV stations do not compete significantly with other media and so form a separate market in each broadcast area. There are about ninety DMAs served by four or fewer commercial TV stations where there may be little scope for joint ownership. However, there are over 40 DMAs with eight or more commercial stations in which some joint ownership of TV stations could probably be permitted without raising competitive concerns.

To take another case, suppose that TV stations and radio stations are considered to be in the same market. In this case, cross-ownership of TV stations and radio stations could raise competitive concerns in some markets. But there is no justification for an arbitrary cap on the number of cross-owned stations. Considerable cross-ownership could occur without raising significant antitrust -- or competitive concerns.

A case-by-case analysis could show that joint ownership should be permitted in some instances even if the concentration level on its face would indicate a possible competitive problem. For instance, if a station is dark or for some reason does not contribute significantly to competition, joint ownership is probably not anti-competitive.

Joint ownership or operation can also enable stations to offer superior services that would not be economical for either station to offer by itself. Such gains may outweigh competitive concerns.

By the standards of competition analysis, the TV duopoly and radio-TV cross-ownership restrictions now in place are not needed to preserve competition. I believe the Commission should relax these restrictions and preserve competition through antitrust analysis in cooperation with the Department of Justice.

Competition and diversity are offered as the two bases for the Commission's ownership rules. I find it instructive to contrast the two. First, competition policy is justified by a clearly identified market failure. I don't know that anyone has shown that there was a corresponding market failure that leads to insufficient level of diversity.

Second, unlike with competition, there appears to be no sound theoretical basis for linking deconcentrated station ownership to diversity. Counting voices seems to imply that persons or groups without a broadcast station don't have a voice. Clearly there are numerous groups in society that find many ways of persuasively expressing their views without owning a broadcast station.

Even if we knew how to increase diversity through ownership rules, it would be a mistake in my view to take what I call an absolutist approach to diversity. Following an absolutist approach, if diversity is good, then a policy that leads to more diversity must be preferred to any policy that yields less diversity.

Such an approach is not the basis for sound decisionmaking. If I may offer a comparison, we all value safety. And limiting highway speeds to 25 miles per hour would likely increase safety. But we don't adopt such a speed limit because the cost in inefficiency and loss of personal freedom is judged to be too high. Similar balancing is needed in the pursuit of diversity or any other social goal.

In conclusion, competition in broadcasting can be preserved using antitrust standards without the need for one-size-fits-all restrictions like the duopoly and one-to-a-market rules. If, in selected markets, ownership concentration were allowed to rise to somewhat higher levels consistent with competition standards, I see no reason to think that the associated amount of diversity provided by broadcast stations and other sources would be insufficient. No separate ownership standard based on diversity is warranted.

CHAIRMAN KENNARD: Thank you very much. Mr. Alger.

MR. ALGER: Yes. I'm a -- trained as a political scientist. I'm author of a book called Mega Media, that tries to deal with these broader patterns, and a public affairs consultant.

In my written comments, I noted conceptual foundations of the First Amendment and the public trust responsibilities of the media. We also need to be aware of broad patterns in the media which have broad national and local consequences. One broad pattern in media and society that is vital to keep in mind is the striking trend in public opinion on the media, and its implications. Details in my written statement and more so in my book.

I urge the Commission to be very aware of that state of public mind, its connection with the aggregate media concentration trend, and the impact on news and public affairs material, and ultimately the implications for democracy, as the Columbia Law School dean discussed.

On the role and purpose of the free over-the-air broadcasting system-and along with how to evaluate any genuine substitutes provided by cable TV and other outlets, democratic theory and judicial opinion make clear that the most important element of the prime mass communication system, TV -- broadcast TV, is provision of ample news and public affairs coverage, and exchanges of ideas of a truly diverse nature.

Most crucial is genuine, independent,

investigative journalism. That's the central mechanism in this society to hold government and other officials accountable. And for local TV and radio, local and state news and opinion are the central and most important concern.

I see little of such significant local news material in any TV mode outside traditional VHF stations. So for the most important First Amendment element of calculating total separate voices or sources in a local media market, I see little justification for claiming there are many other full voices on cable, et cetera, and little justification for further loosening ownership rules.

Now, the further notices-the Commission suggests that the broadcast industry is in difficult financial conditions, and hence stations in a given market might need the help of common ownership for economic efficiencies. And there are claims that such group ownership will provide significantly enhanced programmatic offerings, including new or enhanced news and public affairs material.

These are used as justifications for further loosening the ownership rules to allow duopolies of various sorts, et cetera. And with enhanced offerings, plus a claim about editorializing and autonomy in group-owned stations, it is suggested that group ownership wouldn't really reduce the separate voices. Well, I see several sorts of evidence that raise doubts about those claims.

First -- and forgive my frankness on a few of these points -- from the conglomerates owning the networks and their local stations to various other group owners, in my book, I report much evidence that group owners especially and increasingly treat their commitment to -- treat their broadcast stations as commodities and have less and less commitment to serious news and public affairs coverage. I have many testimonials on this from the top ranks on down to field, reporters-among other evidence.

Second, and contradicting the talk of broadcast stations' problematic economics, are the profit margins of most TV stations. At least for anything resembling a decent size market, TV station profit margins range from 20 percent up to Cap. City's ABC's 55 percent. These are profit margins that frankly would make the average industrial manager drool uncontrollably.

And it is goop and conglomerate owners who are putting the greatest pressure on their stations to meet higher and higher profit levels. For example, CBS, that now owns WCCO-TV in my home territory of Minneapolis, demands that CCO raise its profit level from a healthy, very healthy 27 percent up to 40 percent. Where is that money coming from? That resource squeeze must come out of the primary, locally produced programming local news. And those resources are sent out of the community to a distant corporate headquarters.

Third, the huge media-buying binge has resulted in substantial -- or huge debt incurred by many group owners. That puts a further squeeze on station resources. Fourth, and most troubling, as I abundantly document and talk, chapter six in Mega Media, content analysis shows a -- an increasing deterioration in the amount of government and public affairs news, especially state and local news, and the quality of news in general.

And again, pressures for cheapening the news are especially great in group and conglomerate owners, with certain exceptions like A.H. Belo.

Fourth, I worry about the loss of a sense of stewardship for the public trust in the station, a sense of the -- a loss of the sense of news operation as central to the identity of the media organization, especially in the case of industrial media conglomerates, and increasingly, a loss of an independent -- excuse me, an intimate understanding of and profound commitment to the local community. Senator Dorgan has spoken about that.

CHAIRMAN KENNARD: I'll ask you to wrap up, Mr. Alger.

MR. ALGER: Okay. Just one moment here. Further, the frenzy of buying and empire building has bid prices of TV, radio stations up into the stratosphere. This has worsened debt levels. Increasingly, this bids out of the market small business, which I document in the book. And importantly, that includes minorities, as broadcasting and cable has related in October.

I would love to be able to talk about some other things, including the concentration effect on ads, and the more complete view of media group and conglomerate control of media across the board, across media types, as well as conglomerate effects on competition in local areas. Thank you.

CHAIRMAN KENNARD: Thank you. Mr. Miller.

MR. MILLER: Good morning. I'm an equity analyst for Bear Stearns and I've been so since June of 1996. And I cover the broadcast TV and radio business. Before that, I was a commercial banker with the Chase Manhattan Bank for eight years in the media and telecommunications group.

Before stating our position on local ownership rules, I would like to discuss the current operating and financial environment for television broadcasters. To argue the sense of the operating environment confronting local television broadcasters, I would like to state some basic facts to set the stage.

In 1980, there were three broadcast networks; now there are seven. In 1980, there were 734 commercial television stations on the air and now there are 1,197. In

1980, there were ten major pay and basic cable networks; now there are over 60. In 1980, the average home had ten viewing options available to it. In 1980, that number increased to over 50.

Clearly, the video distribution business has become progressively more competitive during the last twenty years. And we believe the main beneficiary of these changes has been the viewer. There are more than -- there are 60 percent more television stations on the air in local markets and 400 percent more viewing options on a national level. There is no shortage of distinct points of view.

In 1998, we wrote a broadcast TV piece called, "Seize and Control Their Destiny", in which we identified four operating challenges confronting the television business. First, the video competition is creating fragmenting viewership, which is adversely impacting the average station's profitability.

Second, local stations must contend with cable networks which enjoy a dual advertising subscription revenue stream, national reach, and content and distribution benefits of being owned by larger entertainment companies. It is being progressively -- becoming progressively more difficult for a single-channel local market broadcaster to compete for advertising, programming, viewers, and talent against these larger, multi-channel operators.

Third, local stations are facing strained network affiliate relations. Networks, in an effort to become more profitable, would like to re-purpose programming and may look to reduce the 400 to 600 million in network compensations they currently pay affiliates.

Fourth, growth in national advertising, which accounts for up to 50 percent of a local station's revenue stream is -- is anemic, driven by intense volume and competition from existing and emerging media.

It is obvious that local, free, over-the-air broadcast TV business is becoming progressively more difficult. We believe in order to survive in this environment-we believe an operator should have a) a broad distribution base, b) the ability to deliver large audiences, c) geographic affiliation and revenue diversity among its properties, and d) multi-media presence in markets if possible.

It may come as no surprise that the factors I've cited require scale and that 90 companies have exited the TV business since 1991 because they lacked it. Obviously, prospects are bleaker for unaffiliated stations and newer, undeveloped entrants.

In terms of the financial markets, capital is the lifeblood of any business. In order to have scale, industry consolidators must have acquisition capacity, which in turn means they must have debt capacity, a valuable stock currency, or both. However, consolidators of television have actually paid a price relative to consolidators of other media, in general.

In fact, since the passage of the Telecommunications Act of '96, the S&P, our Bear Stearns cable and radio stock indexes have outpaced the stock -- the TV stock index by 18 percent, 102 percent, and 207 percent, respectively. TV companies' significant underperformance reflects the cautious view of the market of this business.

As an equity analyst, I meet with and talk to hundreds of portfolio managers and analysts and mutual funds who actively purchase broadcast stocks and who each influence the investment of billions of dollars.

In general, I believe that portfolio managers and analysts are agnostics. They are willing to own the securities of any company, broadcast or not, that exhibits predictable and sustainable cash flow and avoid those that do not.

In this context, I believe that any action the Commission takes to improve the prospects of over-the-air television will reduce risks that confront the increased sustainability of cash flow and increased capital flow to the industry. We support relaxation of local ownership rules because we believe that it simultaneously creates a stronger TV business and more viewership choices.

First, we support the grandfathering of existing television local marketing agreements and support the development of future LMAs. We believe LMAs encourage more viewership choices because a stronger player can subsidize the launch, operating losses, and development of another station that would arguably lack the financial capacity to do so in a market that is probably too small to support the new station.

With economic support, LMA stations have been able to add new voices to the market, add higher quality programming, add news programming, and become a viable affiliate for the emerging networks. Eighty percent of all LMAs support the new WB and UPN networks.

Second, we believe the Commission should expand the duopoly concept to permit out-of-market DMA duopoly in general. We believe television markets and economies contained within a particular DMA are distinct.

Third, we think the Commission should consider duopoly. Large markets typically have the most viewership choices and have the most undeveloped stations. In smaller markets, we see no reason to permit duopolies which put a station on the air or to strengthen the position of weaker players.

Regarding the one-to-a-market rule, we take guidance provided by the Department of Justice in its conclusion that radio and television are not substitutes from an advertiser's point of view. If radio is a distinct marketplace in its own right, then the one-to-a-market rule is moot in terms of economic competition.

Lastly --

CHAIRMAN KENNARD: Please wrap up, Mr. Miller.

MR. MILLER: Yes, sure.

CHAIRMAN KENNARD: Thank you.

MR. MILLER: Lastly, we encourage the FCC not to force divestitures of properties as part of a ruling on LMAs and the one-to-a-market rule. We believe this would cause a sell-off in the stocks of these companies affected and could impact access to capital. Thank you.

CHAIRMAN KENNARD: Thank you very much. Mr. Grossman.

MR. GROSSMAN: Thank you, Mr. Chairman. The material that I received from the Commission described this panel's members as academics, legal scholars, economists, political scientists, and Wall Street observers. And in the interest of full disclosure, I should warn you that I am none of the above.

Far from being a legal scholar, I am in fact a law school drop-out, which may perhaps give me more credibility. I don't know.

Some time ago, I did serve -- occupy the Frank Stanton First Amendment Chair at the Kennedy School of Government. I was a senior fellow at Columbia. But no academic at either of those institutions considered me an academic. I was more likely an -- something of an outside practitioner or a Philistine.

I have, however, spent most of my working life in television, starting in advertising at CBS and NBC, and then at my own company, and then running NBC news and PBS. Currently, I serve on the board of Connecticut Public Broadcasting.

And for my sins, probably because I recently wrote a book called The Electronic Republic, I serve as chairman of the Connecticut Board Strategic Planning Committee, preparing for the digital era no mean piece of planning to go through.

But my role here this morning then is to offer you my own general perspective based only on my own diverse professional experience. And let me say right up front that in my view, you would be making a serious mistake and acting against the public interest if you decided this time to eliminate the TV station duopoly rule or the one-to-a-market rule.

Using ownership restrictions as proposed will serve only to weaken local television service. The ongoing changes in the mass media have not yet made it necessary to relax your ownership rules and risk reshaping the entire television industry for the worse.

If anything, new digital technology, such as data casting, internet access through the TV screen, and the prospects of multiplexing television stations appear to give local TV broadcasters even more opportunities to make money rather than less.

And reducing diversity of station ownership is certainly not advisable as long as your bedrock policy, as you enunciated it, Mr. Chairman, continues to be to encourage diversity of programming news sources and viewpoints.

Obviously, diversity of ownership by itself is no guarantee of producing a diversity of viewpoints. Nor does it guarantee the existence of diverse and antagonistic sources of information that, according to the Supreme Court, undergird the First Amendment.

But a policy that diminishesd diversity of ownership will certainly guarantee that future differing viewpoints will make it [sic] to the airwaves. And such a policy will guarantee the diminution of diverse sources of local news. It will guarantee the homogenizing of, antagonistic sources of ideas, and will help destroy localism.

And I urge you to conduct a careful study of radio, as Commissioner Tristani pointed out, to see the effect on local service that easing radio's local ownership rules has produced. In radio, what was once basically a locally owned media business is now virtually a national oligopoly.

Radio now offers less local service than in the past, in part because easing radio's ownership rules has brought about a predominance of distance, absentee owners more interested in financial results than in broadcast service.

The result is a sharp decline in local radio news gathering and local radio news reporting, and less attention paid to coverage of local issues. Radio has experienced a huge rise in formulaic talk and music formats imposed by distant owners with little regard for individual community needs and interests.

And it's important to note that this sharp deterioration in radio's local service was not caused by economic hardship. Radio is now the most profitable of all the mass media, in many ways the dialing of Wall Street, in part because its programming and operating costs are so cheap.

The economies of scale that companies achieve by buying and operating scores of radio stations most often do not benefit the public, but go to increased profits and cash flow, and repay the debts incurred from radio station purchases.

The typical first step of a company that buys radio and television stations is to slash its newly acquired station's operating costs in an effort to improve the company's profit margins. And the biggest cost centers invariably targeted for budget cuts are local news reporting and local news gathering.

I write an occasional column for the Columbia Journalism Review called "In the Public Interest."And last fall, I wrote about the sad decline of radio news. Every radio news director I interviewed deplored the deterioration of local coverage and the disappearance of radio news reporting. And they blame it on companies' rush to reguire stations to cut costs.

As one said, "Radio today gives the appearance of having a multiplicity of news voices, but in reality what is coming out of these many thousands of radio channels is the product of a very few media owners." Another complaint, that radio's multi-station owners are turning the stations under their control into a commodity rather than a service.

And you should also study, I suggest, what happened in TV markets where public-spirited, quality local broadcasters have sold their stations to larger, distant companies, a trend that will accelerate --

CHAIRMAN KENNARD: Mr. Grossman, if you will wrap it up, please.

MR. GROSSMAN: -- rapidly if you relax local ownership. Seattle, Maine -- Portland, Maine, Sacramento all fit that bill. And finally, as you know, digital technology will enable a single TV station to expand into four or five stations in the same market, compounding the local multiple ownership problem. So I urge you to hold off until it's demonstrated to be necessary to change these rules. Thank you.

CHAIRMAN KENNARD: Thank you very much, Mr. Grossman. And thank you all for those presentations. They were very, very well done. We'll have about a half hour now of questions and answers from the bench.

Because we don't have a lot of time for this, I'm going to ask my colleagues to just jump in, when the spirit moves them, with questions so that we can keep this going and hopefully have a lively discussion. And I'll start out with a couple of questions that I had.

First of all, clearly we have some pretty divergent views on this panel of how we should be evaluating this marketplace and the extent to which consolidation either promotes diversity or undermines diversity. And my colleagues and I really have to be able to come up with a framework for evaluating whether consolidation is going to enhance diversity or undermine it.

One of the things that I've learned in this job is that in talking to not only members of your industry, but really all of the industries that come before the FCC, is that there is -- there is often sort of a consistent theme in competitive markets today. And that is-companies come in and they ask that we deregulate their particular industry and regulate everybody else. And we're seeing a little bit of that in -- in this debate.

But oftentimes, when companies come before us and ask for regulatory relief or changes in our rules, they paint some fairly dire predictions about the costs of regulation, regulatory risks, the -- predictions about the demise of whole industries if we don't give them some regulatory risk. And we've heard that in this particular proceeding.

And, Mr. Miller, as someone who obviously studies the marketplace closely, you in fact made some of these predictions in your testimony-that if we don't adopt fairly significant deregulation, then the broadcast industry will suffer in the future.

I find that difficult though to reconcile with some of the analysis that I've seen of the broadcast industry today, television in particular. It's a very healthy business. And the statistics that I've seen recently show that television stations are trading at 14 times cash flow; that there is a -- there has been a 20 percent increase in television ad revenue, 1997; a 15 percent compounded increase in annual revenues in television versus 12.5 percent in the communications sector overall.

So clearly people are anticipating in the future that the television marketplace will be quite profitable, and is profitable today.

I don't dispute that there are certainly stations that are underperforming and that are in trouble-some of them, in fact, failing. And that's why we have been focusing attention in this proceeding on failing stations, and how do you deal with -- with those.

But what my question for the group of panelists is -- and I'll start with you, Mr. Miller. How do you reconcile your concern about the growth or future of the television industry with what we see today as a very, very successful and profitable industry?

MR. MILLER: No, I don't dispute the fact that we do have an industry that is healthy. But I think we have to take a forward view of the reality of the marketplace. Now, the statistics that you've quoted, for example, on the growth and the revenue in the business, I -- I don't see any level approaching 20 percent in our business.

For example, we've just gone through reporting cycle, and the average broadcaster, driven mostly by political advertising, had maybe three to four percent revenue growth on the top line. Without that political revenue, they would have actually recorded negative growth in the revenue line.

And while it's true that you're saying that -- that television stations are trading as high as 14.5 times, on -- in the normal course of events, they're not trading that high.

And in fact, we are seeing multiples, especially in the smaller markets, start to compress. And in fact, the recent Hersht Argyle transaction with Pulitzer -- they reconstituted the deal so that ultimately Hersht Argyle paid a lower multiple for a deal that they had just struck months ago.

So -- but really the focus of my comments were what do you do -- can you have -- can you have new entrants -- is that good for the business, new entrants, and -- and also encourage diversity? And my point is that there are certain television markets where, if you look back even a year or two years ago-that could not support, because of the size of the advertising pie in that market, new entrants into the marketplace, even though there were signals available to be built out.

And my major points have been that in larger markets and some of these smaller markets, there are signals that are dying to become an active member of an affiliate group, like a WB or a UPN. You wouldn't have those networks without LMAs is my -- was really my point.

I was looking at more what the reality is for the smaller players and how they become viable in this world, and is it a bad thing for a strong player to help these smaller players along? So we have a slightly different view of what -- what the revenue looks like, the multiples look like. And perhaps, you know, my comments were really more towards the weaker players in the market and how you build them into being viable entrants.

CHAIRMAN KENNARD: So it sounds like your -- what you're suggesting is that we should focus our attention on the smaller, underperforming stations that perhaps could not survive unless they were able to team up with a stronger player in the marketplace, as opposed to broader-scale, de-regulatory relief across the board.

MR. MILLER: Well, that's my view -- that's what my points were on duopoly. And for local marketing agreements, I had mentioned the fact that bringing new entrants into the marketplace, new -- new entrants and new voices into the marketplace, which is the major concern that you mentioned in your -- your opening statement. That was really the thrust of your -- your opening remarks. And I tried to answer those. That is one thing.

I think in general, the reality is that as the business progresses, that more widespread duopoly and more widespread ownership relief will be needed.

CHAIRMAN KENNARD: Thank you. Anyone else like to address that question? Mr. Baker.

MR. BAKER: Yes. First, one of the things I didn't say is that I -- I am speaking for myself and not necessarily on behalf of my institution.

CHAIRMAN KENNARD: So am I.

(Laughter.)

MR. BAKER: And I always -- I always used to think it would -- it would be fun to be an FCC commissioner. But I realize how tough all of this is. And I sit here and listen to this and I make a presentation on one side. And I listen to the other side and I see how rational and -- and logical it is. And I think, you know, "Gee, there are some very good points here." And it all comes down -- and I'm sure they are accurate, but in the micro sense.

And we have to look at the -- your job, too, is to look at the macro, to look at the broad picture. And one of my great -- and it is also unclear, it really is unclear, based on even just this simple testimony, what really is correct. And that's why I suggest we have to be very careful.

We have to go slow because if a wrong decision is made now -- and that's one of the things that we've kept finding in our research -- that a lot of bad decisions were made inadvertently. They were -- they were made -- but they were still made.

And once a bad -- a wrong decision is made, it's almost -- it's impossible to undo it. And there is a terrible damage that is done to the broader society as a whole. So my -- my vote is to go slow and be very careful. And this kind of discussion is very valuable.

CHAIRMAN KENNARD: Thank you. Mr. Grossman.

MR. GROSSMAN: Just very quickly. I think in dealing with small stations and underutilized frequencies, obviously waivers and special exceptions can be made. But I think, as Bill Baker pointed out, to recast the whole industry, in effect, for these exceptions to what is, I think, a very good rule-at this point at least, there is no need for it economically. Station prices are at an all-time high. And I think you run great risks in doing so.

CHAIRMAN KENNARD: Thank you. Any other questions from the bench?

COMMISSIONER NESS: Following up on that discussion, I believe Dean Alger testified that the cash flow multiples of many of these stations are in the forties and fifties percentile. With consolidation --

MR. ALGER: Profit margin or the -- I'm sorry. Do you mean the profit margin or the multiples?

COMMISSIONER NESS: The cash flow -- I'm sorry, the cash flow percentage, your profit margin -- cash flow margin, if you will. We've seen those multiples remaining - not only remaining fairly stable, but also increasing over the last couple of years. And we also have seen an enormous consolidation. We talked a little bit about radio, but also expansion and consolidation within television.

Can anyone comment, particularly Mr. Miller, as to whether you have seen in the deals that you have looked at, that as a result of these consolidations, that a greater percentage of revenues was dedicated toward public service programming, or did it go to pay off debt service?

I know you have a background as a commercial lender. And I'm delighted to see a commercial lender making good.

(Laughter.)

MR. MILLER: Thank you. Actually, way back when, we worked on a transaction involving some radio stations in Washington, way back when I was a Chase Senior at American. The -- the -- the question asked really is have we seen any of the -- any of this kind of -- the prosperity of the industry transform itself?

Well, I think we've seen that in two ways. First of all, the television business is, relative to a lot of other media, more regulated in terms of having mandatory children's programming -- three hours of that, having also dedicated a lot of time for public service announcements and community -- obviously, they're the link to the community.

And the way I look at it is that in the top fifty markets, the ABC, CBS, and NBC affiliates spend over $1.2 billion, just in news product alone. And what you're seeing is the local stations are actually saying, "We want more news programming."

They're putting more -- you know, you're seeing two, three hours for the typical station is now expanded to four or five hours of local news. And I think that that is a subtle way of saying that we're recommitting ourselves to the local marketplace with the prosperity of the business.

COMMISSIONER NESS: But isn't it also true that local news is extremely profitable for the local stations? That's why at least the first and second stations in the market-that drives about a third of their cash flow.

Is it not -- are you suggesting that all of the savings or a substantial portion of the savings that comes through these acquisitions are being dedicated to children's television, educational television? If that's so, I would love to see the statistics on that. I would be a big fan of